Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

LAWRENCE N. BLUM, PH.D., *Petitioner*

v.

MICHAEL CROWE, STEPHEN CROWE, CHERYL A. CROWE, JUDITH ANN KENNEDY, SHANNON CROWE, AARON HOUSER, MARGARET SUSAN HOUSER, CHRISTINE HUFF, AND GREGG HOUSER, *Respondents*

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented For Review

1. Whether a private psychologist requested by the police to consult on a single interrogation of a criminal suspect in a murder investigation is entitled to assert qualified immunity pursuant to Richardson v. McKnight 521 U.S. 399 (1997).

2. Whether the holding and standards set forth for application of qualified immunity to private parties in Richardson v. McKnight 521 U.S. 399 (1997) should be clarified or re-examined due to the Circuit Courts' disinclination to extend qualified immunity to private individuals and the Ninth Circuit's blanket refusal to extend qualified immunity to private individuals.

3. Whether the tactics and lines of questioning employed during Plaintiffs' interrogations violated the Fourteenth Amendment shocks the conscience standard under prior precedent and this Court's decision in Chavez v. Martinez 538 U.S. 760 (2003).

4. Whether the law was clearly established that the tactics and lines of questioning employed during Plaintiffs' interrogations were a violation of the Fourteenth Amendment where the presiding Federal District Court, subsequent Ninth Circuit case law, and this Court in Chavez v. Martinez have indicated that such tactics and lines of questioning are not a violation of the Fourteenth Amendment.

List of Parties
Whose Judgment is Sought to be Reviewed

Lawrence N. Blum, Ph.D. seeks review of the Ninth Circuit Court of Appeals' reversal of the District Court's grant of summary judgment in Lawrence N. Blum, Ph.D.'s favor and against Plaintiffs Michael Crowe, Stephen Crowe, Cheryl A. Crowe, Judith Ann Kennedy, Shannon Crowe, Aaron Houser, Margaret Susan Houser, Christine Huff, and Gregg Houser.

Lawrence N. Blum, Ph.D. also joins in the Petitions filed by the Escondido and Oceanside parties seeking review of the Ninth Circuit Court of Appeals decision.

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. THE LOWER COURT DECISIONS 5

A. The District Court Decision Granting Summary Judgment to Dr. Blum 5

B. The Ninth Circuit Reversal of Summary Judgment on the Conspiracy Claim 12

LEGAL ARGUMENT 14

IV. APPLICATION OF QUALIFIED IMMUNITY TO § 1983 LAWSUITS 14

V. RICHARDSON V. MCKNIGHT 15

A. The Richardson Majority Opinion 16

B. The Richardson Majority Caveats 18

C. The Richardson Dissent 19

VI. CIRCUIT COURTS' DENIAL OF QUALIFIED IMMUNITY AFTER RICHARDSON 21

VII. APPLICATION OF RICHARDSON TO DR. BLUM 25

A. Dr. Blum is Entitled to Assert Qualified Immunity Under the Richardson Caveat 25

B. The Richardson Majority Criteria for Extending Qualified Immunity to Private Individuals Should Be Re-Examined 28

VIII. PLAINTIFFS' FOURTEENTH AMENDMENT RIGHTS WERE NOT VIOLATED AND THE LAW WAS NOT CLEARLY ESTABLISHED THAT THE SUBJECT INTERROGATIONS VIOLATED THE FOURTEENTH AMENDMENT 33

A. Plaintiffs' Fourteenth Amendment Rights Were Not Violated 34

B. The Law Was Not Clearly Established That the "Tactics and Lines of Questioning" in the Interrogation Violated the Fourteenth Amendment 36

IX. CONCLUSION 42

TABLE OF AUTHORITIES

Page

CASES

Bartell v. Lohiser
215 F.3d 550, 556-557 (6th Cir. 2000) 25

Beecher v. Alabama
389 U.S., 36 (1967) 35

Burke v. Town of Walpole
405 F.3d 66 (1st Cir. 2005) 23

Camilo-Robles v. Hoyos
151 F.3d 1 (1st Cir. 1998) 23

Chavez v. Martinez
538 U.S. 760, 766, 773 (2003) ..... Passim

Clement v. City of Glendale
518 F.3d 1090, 1096-1097 (9th Cir. 2008) 24

Clewis v. Texas
386 U.S. 707 (1967) 35

Cooper v. Parrish
203 F.3d 937 (6th Cir. 2000) 21

County of Sacramento v. Lewis
523 U.S. 833 (1998) 34

Darwin v. Connecticut,
391 U.S. 346 (1968) 35

Delia v. City of Rialto 2010 U.S.App. LEXIS
18836 (9th Cir. 2010) 24

Franklin v. Fox
312 F.3d 423, 440 (9th Cir. 2002)..... 6, 24

Gonzales v. Spencer
336 F.3d 832, 835 (9th Cir. 2003)..... 24

Harrison v. Ash Co.
539 F.3d 510, 521-525 (6th Cir. 2008) 21

Hinson v. Edmond
192 F.3d 1342 (11th Cir. 1999) 22

Jensen v. Lane County
222 F.3d 570 (9th Cir. 2000) 23, 39

Malinowski v. DeLuca
177 F.3d 623 (7th Cir. 1999) 22

Pearson v. Callahan
129 S.Ct. 808 (2009) ..... Passim

Reck v. Pate
367 U.S. 433, 439 - 440 (1961) 35

Richardson v. McKnight
521 U.S. 399 (1997) ..... Passim

Rosewood Services v. Sunflower Diversified Services
413 F.3d 1163 (10th Cir. 2005) 22

Sain v. Wood
512 F.3d 886, 892 ..... 22, 23

Sherman v. Four County Counseling Ctr.
987 F.2d 397, 405-406 (7th Cir. 1993) 22

Stoot v. City of Everett
582 F.3d 910 (9th Cir. 2009) 37, 38, 39, 40

Toussie v. David Park Estates, Inc.
323 F.3d 178 (2nd Cir. 2003) 22

Warner v. Grand County
57 F.3d 962 (10th Cir. 1995) 22

Williams v. O'Leary
55 F.3d 320, 324 (7th Cir. 1995) 22

Wyatt v. Cole
504 U.S. 158 (1992) 14, 16, 29

STATUTES

42 U.S.C. § 1983 ..... Passim

TREATISES

123 Harvard Law Review 28, 29, 31

Citations of Opinions and Orders Entered in the Case

Crowe v. County of San Diego 608 F.3d 406 (9th Cir. 2010). Filed January 14, 2010; amended January 27, 2010; second amendment June 18, 2010.

Crowe v. County of San Diego 359 F.Supp.2d 994 (S.D. Cal. 2005). Decided February 28, 2005.

Crowe v. County of San Diego 303 F.Supp.2d 1050 (S.D. Cal. 2004). Decided February 17, 2004.

Basis for Jurisdiction

The Ninth Circuit Court of Appeals decision was filed January 14, 2010 and amended January 27, 2010. The Second Amendment was filed on June 18, 2010. The Ninth Circuit denied the Petition for Rehearing on June 18, 2010.

28 U.S.C. § 1291 confers jurisdiction on this Court to review the Ninth Circuit's reversal of the District Court's grant of summary judgment in this matter. The basis for federal jurisdiction in the District Court was asserted under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

STATEMENT OF THE CASE

I.
INTRODUCTION

Lawrence N. Blum, Ph.D. is a private psychologist who consulted with the Escondido Police Department on a single case involving the interrogation of Michael Crowe whom the Police suspected brutally murdered his 12-year-old sister, Stephanie Crowe, in their home on the evening of January 20, 1998. Michael Crowe and two of his friends who were also accused of Stephanie's murder, and their respective family members, brought claims under 42 U.S.C. § 1983 against Dr. Blum arising out of the limited consultation he had with the Escondido Police regarding a single interrogation of Michael Crowe.

In reversing Dr. Blum's successful Motion for Summary Judgment on all of Plaintiffs' § 1983 claims, the Ninth Circuit Court of Appeals did not apply the doctrine of qualified immunity to Dr. Blum as a private individual. The case against Dr. Blum directly implicates this Court's decision in Richardson v. McKnight 521 U.S. 399 (1997) addressing the availability of qualified immunity for private individuals in § 1983 lawsuits. In particular, Dr. Blum's involvement in the Escondido Police's murder investigation fell squarely within the Richardson majority's caveat of "a private individual briefly associated with a government body, serving as an adjunct to government in an essential governmental activity, or acting under close official supervision." Richardson, supra at p. 413. Moreover,

a review of federal circuit law decided after Richardson, especially from the Ninth Circuit, reveals that in virtually every case the Courts have held that qualified immunity is not available to a private individual which calls into question the practical feasibility of applying the majority's historical/policy approach as opposed to the functional approach advocated by the four dissenting Justices in Richardson.

This Court should grant review to determine important constitutional questions still unanswered by the Richardson decision, to clarify the scope of the caveats set forth by the majority Opinion, and to examine whether the current standard provides sufficient certainty for lower courts and just results for private individuals assisting police in criminal investigations.

II.
STATEMENT OF FACTS

Lawrence N. Blum, Ph.D. is a clinical psychologist licensed by the State of California who maintains a private psychology practice in the Los Angeles area. Dr. Blum's practice consists of treating and counseling law enforcement officers who suffer from stress and trauma associated with the officers' work environment and experiences. Dr. Blum is not an interrogation specialist and prior to the Stephanie Crowe murder investigation had never consulted with any law enforcement agency regarding the interrogation of a criminal suspect. [App. 346]

On January 23, 1998, Dr. Blum was contacted by Sergeant Phillip Anderson of the Escondido Police Department about an interview they were going to conduct with Michael Crow whom they suspected of murdering his 12-year-old sister Stephanie. Dr. Blum met with Sgt. Anderson, Detective Ralph Claytor, and Detective Mark Wrisley at the Escondido Police Department. The officers showed Dr. Blum a videotaped portion of the previous interrogation of Michael Crowe and provided Dr. Blum with background information regarding Michael Crowe and his relationship with his family. Based upon that information, Dr. Blum commented to the police that Michael Crowe was probably somewhat alienated from peer group relationships with his family, that he appeared to be more involved in fantasy video games as opposed to family activity, that he likely withdrew to fantasy games as a comfort of some kind, and that his persistent drop in grades could be a sign of some psychological or emotional crises. [App. 17, 332]

Dr. Blum provided the detectives with this analysis of Michael Crowe's personality or character as opposed to specific interview techniques and discussed broad-brushed themes of which the officers already had an understanding. Dr. Blum suggested that the detectives address Michael Crowe in terms of analogies he would understand and that it was up to the detectives' independent judgment as to how to utilize that advice during the interrogation. One of the detectives has referred to the foregoing consultation with Dr. Blum prior to the interrogation as the development of a "tactical plan." [App. 17, 332]

Dr. Blum observed a portion of the January 23, 1998 interrogation of Michael Crowe conducted by Detectives Claytor and Wrisley. Dr. Blum did not interrogate Michael Crowe at any point in time. Dr. Blum did not direct or advise the police as to the length or timing of the interview with Michael Crowe, the manner in which Michael Crowe should be treated during the interview, or any questions which the detectives should ask Michael Crowe. Dr. Blum did not direct or advise the detectives that they should confront Michael Crowe with forensic evidence of his guilt, that they should threaten him in any manner, that they should promise him any leniency, or that they should lie to or deceive him. Detectives Claytor and Wrisley testified that the January 23, 1998 interrogation of Michael Crowe was based upon their own independent judgment and was not under the direction and control of Dr. Blum. [App. 284, 297]

Dr. Blum did not consult or participate in any manner in any other interrogations conducted by the Escondido Police Detectives, including the three pre-January 23 interrogations of Michael Crowe, the 1½-hour and 9½-hour interrogations of Aaron Houser,[1] or the 13½-hour and 12-hour interrogations of Joshua Treadway.

Michael Crowe, Aaron Houser and their family members have alleged a variety of claims against Dr. Blum under 42 U.S.C. § 1983. Dr. Blum asserted that he is entitled to qualified immunity on Plaintiffs'

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[1] Although Dr. Blum had nothing to do with Aaron Houser's interrogations, the arguments raised in this Petition are fully applicable to Houser's interrogations and claims against Dr. Blum.

§ 1983 claims before both the District Court and the Ninth Circuit. Neither Court applied qualified immunity to the claims asserted against Dr. Blum.

III.
THE LOWER COURT DECISIONS

The District Court granted summary judgment in favor of Dr. Blum on all claims made by Plaintiffs. The Ninth Circuit Court of Appeals reversed the District Court on Plaintiffs' conspiracy claims only.

A. The District Court Decision Granting Summary Judgment to Dr. Blum

The District Court, Honorable John S. Rhodes, granted summary judgment to Dr. Blum on each and every claim alleged by Plaintiffs. [App. 354]

With respect to the Fourth Amendment § 1983 claims raised by Plaintiffs, the District Court noted that it was undisputed that Dr. Blum did not physically participate in the arrests of the boys or the searches of their residences. [App. 213] The District Court further determined that under Ninth Circuit law, in any § 1983 action against a private individual the plaintiff must establish that the private individual was a proximate cause of the Constitutional violation. [App. 214] The District Court held:

> "Here, there is absolutely no evidence that defendant Blum had any control over the other defendants' decision to conduct the challenged searches and

> arrests. Accordingly, as a matter of law, defendant Blum did not proximately cause any Fourth Amendment violation and thus is entitled to summary judgment with respect to the Fourth Amendment claims of all three boys." [App. 214-215]

As to Plaintiffs' Fifth Amendment claims arising out of the alleged coercive interrogations, the District Court again determined that there was no evidence that Dr. Blum was the cause of any Fifth Amendment violation. The District Court held:

> "As for defendant Blum, as noted in section I.A. *supra*, defendant Blum, as a private actor, is not the proximate cause of a constitutional violation committed by a state actor unless he 'had some control over' the state actors' decision to commit the unconstitutional act. *See Franklin*, 312 F.3d at 446. There is no evidence in the record suggesting that defendant Blum had such control over the police officer defendants." [App. 284]

With respect to Plaintiffs' Fourteenth Amendment claims, the District Court held that the evidence was insufficient to meet the rigorous shocks the conscience standard necessary for a violation of the Fourteenth Amendment. In its detailed decision the District Court held:

"Having viewed the videotaped interviews and interrogations of Joshua Treadway and Aaron Houser in their entirety,[2] and having also reviewed the transcripts thereof, the court concludes that defendants' behavior during the interviews and interrogations, although not commendable, was not 'so egregious, so outrageous that it may fairly be said to shock the contemporary conscience.' [citation omitted] While it cannot be forgotten that the boys were juveniles at the time of the interrogations, and while some of the interrogations were long, the manner of interrogations was neither egregious, outrageous, nor shocking. This is not a case of physical or psychological torture. Defendants never yelled at the boys or even raised their voice. The boys were given food and water and bathroom breaks, even if not always immediately. Although the police may lied at times, such conduct is not outrageous and, in fact, does not even necessarily amount to coercive conduct. [citation omitted] Similarly, it is not outrageous that defendants attempted to extract confessions from the boys by telling them that they could

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[2] The District Court reviewed the videotapes of the entire interrogations in open court with an invitation to all counsel that they may be present.

> get treatment rather than jail if they confessed given that the Ninth Circuit recently found that similar statements do not even rise to the level of being coercive. [citation omitted] Moreover, although the boys became emotional at times during the questioning, the use of questions that elicit an emotional response does not transform the interrogation into one that 'shocks the conscience.' [citation omitted] Finally, although defendants employed a 'good cop/bad cop' approach during some of the interviews, such a manner of interrogation is relatively common and certainly not shocking, even when juveniles are involved." [App. 291-293]

In addition, the District Court determined that at least as to the police officers, qualified immunity would entitle them to summary judgment on Plaintiffs' Fourteenth Amendment claims.

> "Moreover, even if it were determined that defendants' conduct did violate the boys' Fourteenth Amendment substantive due process rights, a reasonable officer would not have known that the interrogation of the boys amounted to a violation of their Fourteenth Amendment rights of substantive due process given that the interrogations lacked the brutality that has previously marked the police

> conduct found by the courts to be 'shocking to the conscience.'" [App. 295-296]

With respect to Michael Crowe's Fourteenth Amendment claim, the Court determined that there was no concrete evidence that Dr. Blum engaged in any conspiracy to violate Michael Crowe's rights to be free from government conduct that shocks the conscience and furthermore that Dr. Blum did not engage in any behavior that shocked the conscience. In particular, the District Court found:

> "The Crowe plaintiffs' claims against defendants Blum and McDonough appear to be predicated upon the conduct of Michael's interrogation. A review of the record reveals no concrete evidence of a conspiracy encompassing the violation of Michael Crowe's Fourth [sic] [Fourteenth] Amendment right to be free of government conduct that 'shocks the conscience' of which these defendants were a part.
>
> Moreover, neither defendant himself directly engaged in conduct that 'shocks the conscience.' The purpose of an interrogation is procure a confession. Therefore, it does not 'shock the conscience' that defendant Blum provided the police with advice regarding how to best procure a confession from Michael Crowe based on

> Michael's psychological makeup where there is no evidence that defendant Blum advised using the type of 'brutal' techniques that have been held to violate the Fourteenth Amendment substantive due process clause. ... . Because defendant Blum and McDonough did not engage in behavior that 'shocks the conscience' so as to support a claim for violation of the Fourteenth Amendment substantive due process clause, these defendants are entitled to summary judgment." [App. 297]

With respect to Aaron Houser's defamation claims against Dr. Blum arising from his comments to the police, the District Court granted summary judgment in favor of Dr. Blum on First Amendment grounds. [App. 333-336]

Finally, the District Court addressed Plaintiffs' claims that Dr. Blum engaged in a conspiracy to violate Plaintiffs' civil rights, holding that there was no evidence that Dr. Blum was involved in such a conspiracy. The District Court held:

> "As noted in section I.A., *supra*, plaintiffs allege that there was a 'common objective to convict and incarcerate the boys' and that defendant Blum was a part of this 'scheme to blame and punish the boys' for Stephanie's murder. [citation omitted] According to plaintiffs, the objective of

the conspiracy was to be accomplished by means of illegal interrogations, arrests, searches, and seizures.

Here, although defendant Blum participated in the interrogation of the boys, there is absolutely no evidence that he was even aware of the alleged conspiracy or its objectives, let alone that he was a part of this conspiracy. ....

First, defendant Blum did not have a prior relationship with the other defendants from which one could infer that he was a participant in the alleged conspiracy to wrongfully arrest the boys or that he would have any interest in participating in a conspiracy which, plaintiffs contend, was directed at protecting Officer Walters and the Escondido Police Department from criticism. ...

Finally, it should be emphasized that even if by giving the advice he gave, defendant Blum violated the boys' Fifth Amendment rights (which the court has concluded he did not), to be held liable for false arrest/false imprisonment, the evidence must disclose not only that defendant Blum's actions were illegal but that his conduct was 'in furtherance of a common agreement or understanding to achieve the unlawful

> purpose of the Escondido defendants. [citation omitted] As stated, there is simply no evidence that defendant Blum's participation in the interrogation of Michael Crowe, whether constitutional or not, was in furtherance of a common agreement or understanding to achieve the alleged unlawful purpose of the Escondido defendants in pursuing the arrests and prosecution of the boys.
>
> Because no reasonable factfinder could find that defendant Blum was a participant in the alleged conspiracy, defendant Blum is entitled to summary judgment with respect to the boys' false arrest/false imprisonment claim." [App. 345-347]

The District Court granted Dr. Blum's Motion for Summary Judgment as to all claims by Plaintiffs. [App. 354]

B. The Ninth Circuit Reversal of Summary Judgment on the Conspiracy Claim

The Ninth Circuit Court of Appeals reversed the District Court's grant of summary judgment to Dr. Blum on Plaintiffs' conspiracy claim alone. In contrast to the District Court's extraordinarily detailed and thorough evaluation of Dr. Blum's conduct and involvement with the Escondido Police Department's investigation of Stephanie Crowe's

murder, the Ninth Circuit dedicated a single paragraph to Dr. Blum's involvement in this matter. The Ninth Circuit stated:

> "The record shows that the quality of Blum's involvement in the interrogations is not categorically inconsistent with a tacit 'meeting of the minds.' According to one of the detectives, Blum helped the police formulate a 'tactical plan' to approach the interview. Moreover, the detectives 'pretty much' followed his advice after these consultations. Insofar as these tactics and lines of questioning by the detectives shock the conscience, as demonstrated above, summary judgment in favor of Blum is unwarranted. A meeting of the minds can be inferred from circumstantial evidence, and Blum's involvement in the interrogations, particularly in formulating and directing the tactical plan, is sufficient for a reasonable factfinder to conclude that it was 'unlikely to have been undertaken without an agreement,' of some kind between the defendants. [citation omitted] We therefore reverse the district court's grant of summary judgment on this point." [App. 67-68]

LEGAL ARGUMENT

IV.
APPLICATION OF QUALIFIED IMMUNITY TO § 1983 LAWSUITS

A public law enforcement officer is entitled to assert qualified immunity as to § 1983 claims alleging constitutional violations arising out of an interrogation of a criminal suspect as well as conspiracies to violate constitutional rights. Chavez v. Martinez 538 U.S. 760, 766, 773 (2003); Wyatt v. Cole 504 U.S. 158 (1992). The doctrine of qualified immunity presents significant substantive and procedural protections against § 1983 lawsuits.

In Pearson v. Callahan 129 S.Ct. 808 (2009) this Court recently enunciated the important policies underlying the application of qualified immunity to § 1983 claims:

> "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly-established statutory constitutional rights of which a reasonable person would have known.' [citation omitted] ... The protection of qualified immunity applies regardless of whether the government officials' error is 'a mistake of law, a mistake of fact, or mistake based on mixed questions of law and fact.' [citation omitted]

> Because qualified immunity is an immunity from suit rather than a mere defense to liability ... it is effectively lost if a case is erroneously permitted to go to trial. [citation omitted] ... Accordingly, 'we repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation.' [citation omitted] Pearson, supra, 129 S.Ct. at p. 815.

While the legal significance of qualified immunity for public officials is unquestioned, the application of qualified immunity to private parties is far from settled.

V.
RICHARDSON V. MCKNIGHT

In Richardson v. McKnight (1997) 521 U.S. 399, supra, two prison guards who were employed by a private company which operated a Tennessee prison were sued by a prisoner under 42 U.S.C. § 1983 for allegedly injuring the prisoner through the use of extremely tight physical restraints. The private guards asserted a qualified immunity from § 1983 lawsuits. After the District Court and Sixth Circuit denied the guards' assertion of qualified immunity, this Court granted certiorari.

A. The Richardson Majority Opinion

In the Court's 5-4 decision, the majority opinion in Richardson determined that under the narrow facts and circumstances involving a private company managing a prison, the private prison guards were not entitled to assert qualified immunity from suit under § 1983. Richardson, supra at pp. 401, 413. In reaching this conclusion, the Richardson majority analyzed the Court's decision in Wyatt v. Cole 504 U.S. 158 (1992) which held that a private individual accused of conspiring with government employees was not entitled to assert qualified immunity on the "narrow" circumstance where the private individual was "invoking the state replevin, garnishment or attachment statute." Wyatt, supra at pp. 168-169; Richardson, supra at p. 404. In analyzing the Wyatt decision, the Richardson majority determined that there were two factors which must be analyzed in order to determine whether qualified immunity applied to the private prison guards in the § 1983 action before it: any history of providing immunity to prison guards and the policy concerns or purposes underlying immunity which would warrant applying it to the prison guards in the § 1983 action before it.

The Richardson majority concluded that history did not reveal a "firmly-rooted" tradition of immunity applicable to privately employed prison guards. Richardson, supra at p. 404. The majority determined that private contractors were heavily involved in prison management activities as far back as the 19th century and there was no conclusive evidence of a historical tradition of immunity for

private parties carrying out these functions. Richardson, supra at pp. 405-407. History, therefore, did not provide any significant support for the immunity claim of the private prison guards. Richardson, supra at 407.

The majority in Richardson determined that it was a closer question as to whether the purposes underlying qualified immunity warranted its application to the prison guards. Richardson, supra at pp. 407-408. The Court recognized that one of the primary purposes of the immunity doctrine is to protect public officials, as well as society, from unwarranted timidity by public officials who may be deterred from exercising their authority through the threat of lawsuits. Richardson, supra at pp. 407-408. The majority opinion rejected the prison guards' argument that since they perform the same work as state prison guards, qualified immunity must be applied to a similar degree. The majority held that the mere performance of a government function should not make the difference between unlimited § 1983 liability and qualified immunity especially for a private person who performs a job without government supervision or direction. Richardson, supra at p. 409. The majority also noted that marketplace pressures were different for a private company versus a government employer and thus there was less concern with unwarranted timidity. Richardson, supra at p. 409-410. The majority indicated that private employees may not be deterred by the threat of damages due in part to the availability of the comprehensive insurance requirements for private companies as well as the ability to offer higher pay or extra benefits

unavailable to civil service employers. Richardson, supra at p. 412-413. Finally, the majority noted that the risk of distraction from lawsuits alone is not a sufficient ground for immunity. Richardson, supra at p. 412.

The majority concluded that private prison guards, unlike those who work directly for the government, do not enjoy immunity from suit in a § 1983 case. Richardson, supra at p. 412.

B. The Richardson Majority Caveats

The majority opinion in Richardson carefully set forth three caveats to their holding that qualified immunity did not apply to the private prison guards for § 1983 liability under the particular circumstances of the case. First, the Court was not deciding whether the defendants were liable under § 1983 or whether they acted under color of state law. Richardson, supra at. p. 413. The second caveat, which has significant applicability to Dr. Blum's case, was stated by the majority as follows:

> "Second, we have answered the immunity question narrowly, in the context in which it arose. That context is one in which a private firm, systematically organized to assume a major lengthy administrative task (managing an institution) with limited direct supervision by the government, undertakes that task for profit and potentially in competition with other firms. The case does not involve a

> private individual briefly associated with a governmental body, serving as an adjunct to government in an essential governmental activity, or acting under close official supervision." Richardson, supra at p. 413.

The third caveat set forth by the majority was the potential applicability of a "good faith" defense which the Richardson majority declined to decide in that case. Richardson, supra at p. 413.

C. The Richardson Dissent

Four Justices dissented from the majority opinion in Richardson. The dissent authored by Justice Scalia and joined by Chief Justice Rehnquist, Justice Kennedy, and Justice Thomas, argued that a functional approach should be applied to determine whether qualified immunity should be extended to private individuals. Richardson, supra at pp. 414-416. The dissent contended that the historical underpinnings underlying immunity established that private parties who were performing governmental functions which give rise to qualified immunity should also be entitled to assert qualified immunity. Richardson, supra at pp. 414-416.

The dissent questioned the holding that qualified immunity should be "unavailable to employees of private prison management firms, who perform the same duties as state-employed correctional officials, who exercise the most palpable form of state police power, and who may be sued for acting 'under color of state law.'" Richardson, supra

at p. 414. The dissent argued that the majority's historical approach was flawed and that the lack of case law supporting qualified immunity for private prison employees should not be disqualifying. Richardson, supra at pp. 414-416. Instead, the dissent relied upon prior Supreme Court precedent which held that immunity analysis rests on functional categories, not on the status of the defendant. Richardson, supra at p. 416-417. The dissent recognized that private individuals have regularly been accorded immunity when they perform a governmental function that qualifies. Richardson, supra at pp. 417-418.

The dissent suggested that the history of the functional approach should govern whether qualified immunity is extended to a private individual and that it should not be dependent upon policy reasons. Richardson, supra at p. 418. The dissent nonetheless analyzed the majority's policy reasons and concluded that the market pressures and insurance analysis employed by the majority was incorrect. Richardson, supra at pp. 419-420.

The dissent concluded that:

> "[S]ince there is no apparent reason, neither in history nor in policy, for making immunity hinge upon the court's distinction between public and private guards, the precise nature of that distinction must also remain obscure. ...
>
> Today's decision says that two sets of prison guards who are indistinguishable

> in the ultimate source of their authority over prisoners, indistinguishable in the powers that they possess over prisoners, and indistinguishable in the duties that they owed toward prisoners, are to be treated quite differently in the matter of their financial liability. .... Neither our precedent, nor the historical foundations of section 1983, nor the policies underlying section 1983, support this result." Richardson, supra at pp. 422-423.

VI.
CIRCUIT COURTS' DENIAL OF QUALIFIED IMMUNITY AFTER RICHARDSON

Since Richardson was decided nearly every Circuit Court which has considered whether qualified immunity is available to a private individual in a § 1983 action has denied the private party's assertion of qualified immunity.

The Sixth Circuit in Harrison v. Ash Co. 539 F.3d 510, 521-525 (6th Cir. 2008) applied the analysis employed in Richardson to hold that nurses who worked for a private company that provided medical services to a county jail were not entitled to assert qualified immunity on a § 1983 claim for failure to provide medical care to prisoner. In Cooper v. Parrish 203 F.3d 937 (6th Cir. 2000) the Sixth Circuit also held that a private attorney who worked alongside prosecutors in an unofficial capacity in pursuing legal action against plaintiff's nightclubs was not entitled to qualified immunity under

Richardson for plaintiff's § 1983 claims.

The Eleventh Circuit has also held that under Richardson, a private prison physician could not claim qualified immunity for failing to provide prompt medical treatment to a prisoner. Hinson v. Edmond 192 F.3d 1342 (11th Cir. 1999). In Rosewood Services v. Sunflower Diversified Services 413 F.3d 1163 (10th Cir. 2005), the Tenth Circuit held that a private non-profit corporation which received and distributed state and federal funds to community services providers to assist developmentally-disabled residents was not entitled to assert qualified immunity pursuant to Richardson.[3]

A Republican Party Chairman was held not to be entitled to qualified immunity for conspiring with state officials to unlawfully prevent a builder from constructing a single-family home on property he owned pursuant to the Second Circuit ruling in Toussie v. David Park Estates, Inc. 323 F.3d 178 (2nd Cir. 2003). In Malinowski v. DeLuca 177 F.3d 623 (7th Cir. 1999), the Seventh Circuit held that qualified immunity was not available under Richardson to private building inspectors on § 1983 claims.[4]

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[3] Prior to Richardson, the Tenth Circuit had held that private individuals who performed strip search of plaintiff at request of police were entitled to qualified immunity on plaintiff's §1983 claims). See Warner v. Grand County 57 F.3d 962 (10th Cir. 1995).

[4] In Sain v. Wood 512 F.3d 886, 892, the Seventh Circuit recognized that prior to Richardson, it had granted qualified immunity to privately employed prison psychologists because they were performing a government function, Williams v. O'Leary 55 F.3d 320, 324 (7th Cir. 1995); Sherman v. Four County Counseling Ctr. 987 F.2d 397, 405-406 (7th Cir. 1993) (footnote continued)

The only Circuit which appears to have extended qualified immunity to private individuals is the First Circuit. In Burke v. Town of Walpole 405 F.3d 66 (1st Cir. 2005) a private forensic odontologist who was acting as a consultant with the District Attorney's office in a criminal investigation was held to be entitled to qualified immunity. In Camilo-Robles v. Hoyos 151 F.3d 1 (1st Cir. 1998) the Court held private psychiatrist could assert qualified immunity who consulted with police department as to psychiatric status of police officer who injured plaintiff in § 1983 action. However, the First Circuit failed to even mention Richardson in arriving at their conclusion that qualified immunity was available to the private parties. see Sain, supra at p. 892.

The Ninth Circuit has been the most restrictive Court in applying qualified immunity to private parties, utilizing Richardson v. McKnight to establish a blanket prohibition against private actors asserting qualified immunity in its jurisdiction. Initially in Jensen v. Lane County 222 F.3d 570 (9th Cir. 2000) the Ninth Circuit addressed the Richardson majority's historical underpinnings and immunity policies factor in holding that qualified immunity was categorically unavailable to a private physician who, along with county officials, committed plaintiff to a psychiatric facility. However, since Jensen, the Ninth Circuit has extended a blanket prohibition against private individuals' claims of qualified immunity in § 1983 actions, holding that

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but that Richardson majority rejected the public function test and therefore the law in the Circuit was inconclusive.

the defendant's status as a private party automatically disqualified him from qualified immunity status. Franklin v. Fox 312 F.3d 423, 440 (9th Cir. 2002) (blanket denial of qualified immunity to private individual accused of conspiring with police to violate defendant's Sixth Amendment rights when private individual interrogated or questioned plaintiff in jail without an attorney being present); Gonzales v. Spencer 336 F.3d 832, 835 (9th Cir. 2003) (private attorney hired to defend county in civil rights action denied qualified immunity by Ninth Circuit pursuant to Richardson because she was a private party and not a government employee); Clement v. City of Glendale 518 F.3d 1090, 1096-1097 (9th Cir. 2008) (holding that private towing company may not assert qualified immunity because the defense is generally not available to private defendants in § 1983 lawsuits).

Indeed, as recently as September 2010, the Ninth Circuit in Delia v. City of Rialto 2010 U.S.App. LEXIS 18836 (9th Cir. 2010) held that a private investigator retained by the City to assist in an internal affairs investigation against a firefighter was not entitled to qualified immunity simply because he was a private party. The Ninth Circuit's blanket prohibition against any private actor asserting qualified immunity in its jurisdiction explains the District Court's and the Ninth Circuit's failure to extend qualified immunity to Dr. Blum despite the fact he asserted his right to qualified immunity and briefed the issue before both Courts.

VII.
APPLICATION OF RICHARDSON TO DR. BLUM

A. Dr. Blum is Entitled to Assert Qualified Immunity Under the Richardson Caveat

The majority in Richardson carefully carved out an exception to the requirement that there must be a firmly-rooted tradition in history which supports immunity for a private party and that the purposes of immunity must be served before qualified immunity can be extended to a private party. The majority set forth a caveat that "a private individual briefly associated with a government body, serving as an adjunct to government in an essential governmental activity, or acting under close official supervision" should be entitled to assert qualified immunity. Richardson, supra at p. 431. However, the Circuit Courts have essentially ignored this caveat in post-Richardson decisions.[5] Therefore, because Dr. Blum's case involves unique facts which fall squarely under this caveat, this Court should clarify the application and scope of qualified immunity to private individuals under the "briefly associated/close supervision" caveat in Richardson.

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[5] The decision in Bartell v. Lohiser 215 F.3d 550, 556-557 (6th Cir. 2000) appears to be the sole exception. In Bartell, the Court determined that a private company which provided foster care services to the State was closely supervised by the State's Family and Dependents Agency and thus was entitled to assert qualified immunity under Richardson. Bartell, supra at pp. 556-557.

The record in this case unequivocally establishes that Dr. Blum's limited involvement in the Stephanie Crowe murder investigation is a perfect fit under the criteria set forth in Richardson's second caveat. First, Dr. Blum was briefly associated with the Escondido Police Department. In fact, his only association with the Escondido Police Department involved the Stephanie Crowe murder investigation. [App. 346] Moreover, although the police conducted numerous lengthy interrogations of the three criminal suspects, Dr. Blum only consulted with the police on a single interrogation involving Michael Crowe. [App. 332] Thus, Dr. Blum unequivocally was "a private individual briefly associated with a government body" under the Richardson caveat.

In addition, the record in this case also unequivocally establishes that Dr. Blum was "serving as an adjunct to government in an essential governmental activity." Richardson, supra at p. 413. Dr. Blum served as a consultant to the Escondido Police Department at the behest of Sergeant Anderson with respect to a single interrogation of Michael Crowe in conjunction with the Escondido Police Department's investigation of the brutal murder of 12-year-old Stephanie Crowe. The interrogation of criminal suspects in a murder investigation is undoubtedly an essential governmental activity. See Chavez, supra.

Finally, the record in this case indicates that Dr. Blum more than satisfies the "acting under close official supervision" criteria in the Richardson caveat. This caveat may have had more applicability if Dr. Blum had actually conducted the interrogation of Michael Crowe himself; however, he did not. [App. 214-215] Unlike most private defendants in § 1983 actions, Dr. Blum did not directly engage in any conduct which violated any constitutional right. As the District Court determined, Dr. Blum did not exercise control over the detectives during the interrogation or their murder investigation, nor engage in any conduct which shocked the conscience, findings which are undisturbed by the Ninth Circuit. [App. 284, 294] Therefore, Dr. Blum clearly meets the "under close official supervision" factor of the Richardson caveat.

As previously set forth, the Circuit Courts are virtually unanimous in denying qualified immunity to private individuals in § 1983 actions. The Circuit Courts generally fail to address the Richardson Court's second caveat by which this Court has indicated qualified immunity may be appropriately asserted by a private individual. Qualified immunity should be extended to Dr. Blum under the unique facts of this case which would result in this Court providing further guidance and clarification as to under what circumstances a private individual is entitled to assert qualified immunity under the Richardson majority Opinion.

B. The Richardson Majority Criteria for Extending Qualified Immunity to Private Individuals Should Be Re-Examined

As previously set forth, since the Richardson case was decided, the Circuit Courts have virtually unanimously rejected the application of qualified immunity to private parties in § 1983 lawsuits in analyzing the historical underpinnings and immunity purposes criteria established by the majority. Indeed, the Ninth Circuit has extended the Richardson Opinion as a virtual complete bar to private parties asserting qualified immunity in this jurisdiction.

In March of this year the Harvard Law Review published the scholarly treatise *Developments in the Law: State Action and the Public Private Distinction: Private Party Immunity from Section 1983 Suits*, 123 Harvard Law Review 1266 (March 2010). This treatise noted that:

> "Lower courts have attempted to apply [the Richardson majority] standard, but have been confused by Richardson's use of precedent and the complex mix of factors in its analysis and have reached divergent conclusions about various categories of private actors. It is time for the court to reconsider the Richardson standard and either clarify its own logic or adopt a new standard." 123 Harvard Law Review at p. 1267 ...

The court's narrow holdings in Wyatt and Richardson – the only two opinions to address private qualified immunity squarely – leave the applicability of the history and policy standard uncertain. The Richardson Opinion, upon which lower courts principally rely, fails to address complex issues of precedent and to clarify its own logic in applying the standard. Lower courts have unsurprisingly reached contradictory results in trying to apply Richardson. 123 Harvard Law Review at p. 1270. ....

Lower courts have varied widely in applying Richardson, with the majority of cases denying qualified immunity. Seven Circuits have used Richardson as a test, refusing to grant private actors' qualified immunity in any circumstances. While only one Circuit has explicitly granted private actors qualified immunity under Richardson, others have arguably done so implicitly, so immunity is not always categorically precluded. One Circuit has held that qualified immunity applied in every case it has considered, even though it has not relied on Wyatt or Richardson. The remaining four Circuits have no holding applying Richardson. Much litigation continues at the district court level without circuit-wide resolution." 123 Harvard Law Review at p. 1271.

The Harvard treatise concludes:

> "Contradictory immunity standards have costs. Patchwork liability across jurisdictions raises privatization costs as firms adapt to each jurisdiction's rules, requiring differences in benefits and personnel practices even within a state. Federal laws should not create such problems, especially since Congress is empowered to solve them. The inconsistency of outcomes in federal court make this litigation unfair to both defendants and plaintiffs, as constitutional liability and redress will depend not only on who the parties are, but also upon where they are. In addition, the deluge of more than 100 cases so far over whether qualified immunity applies is an added cost, not considered by Richardson, that has been and will continue to be passed on to society. The cost of litigation is sure to continue absent intervention.
>
> These problems could be largely addressed if the court clarified its immunity standard by explaining 'behest of the sovereign,' how the factors relate and which are dispositive, and who bears the burden of proof. Alternatively, the court could reform the standard by granting immunity to all state actors or to those who are

> determined to be based on certain state action tests (that is, a case-by-case functional standard). While the latter approach is less consistent than the former, it would reduce the inquiry to a single point and be no more inconsistent than the current standard. The court has had opportunities to review the issue, but it has not done so. ... Otherwise the aggregate costs of inconsistency will continue to rise, and state privatization will continue to be burdened needlessly. A clear, logically coherent standard is something upon which all states and their citizens can and should insist." 123 Harvard Law Review at pp. 1277-1278.

This recent treatise enunciates persuasive reasons why writ of certiorari should be granted in the present case to clarify and/or re-examine the standard under Richardson for granting qualified immunity to private individuals.

Finally, simple justice should cause this Court to grant Dr. Blum's writ of certiorari in the present case. By assisting the police in their investigation of Stephanie Crowe's murder, Dr. Blum has been found to be a state actor for purposes of § 1983 liability. [App. 213-214] Moreover, since the Ninth Circuit has determined that Dr. Blum could be liable on a conspiracy theory under the incredibly nebulous standard of "not categorically inconsistent with a meeting of the minds," Dr. Blum could conceivably be liable for the actions of the Escondido Police

Detectives.

Dr. Blum's extremely limited participation in the Stephanie Crowe murder investigation essentially consisted of consulting with the police on a single interrogation of Michael Crowe on January 23, 1998. The Escondido Police, on the other hand, according to the Ninth Circuit Opinion conducted four separate interrogations of Michael Crowe, two separate interrogations of Aaron Houser, and three separate interrogations of Joshua Treadway. The Escondido Police interrogated these three individuals for a total of nearly 45 hours. [App. 12-30] In addition, the police conducted numerous arrests and searches and seizures in which Dr. Blum had absolutely no part.

The Escondido Police who performed the many interrogations, the arrests, and the searches and seizures are entitled to assert qualified immunity in this case and could conceivably obtain a complete exoneration for their actions under the qualified immunity doctrine. To prohibit Dr. Blum, who had meager participation in the massive scope of the Stephanie Crowe murder investigation, from asserting qualified immunity simply because of his status as a private citizen is an extreme injustice. This is precisely the type of case where writ of certiorari should be granted so that this Court may re-examine and clarify the contours of the qualified immunity doctrine for private individuals and consider the stark ramifications in denying qualified immunity to private individuals who provide limited assistance to law enforcement officials in criminal investigations.

VIII.
PLAINTIFFS' FOURTEENTH AMENDMENT RIGHTS WERE NOT VIOLATED AND THE LAW WAS NOT CLEARLY ESTABLISHED THAT THE SUBJECT INTERROGATIONS VIOLATED THE FOURTEENTH AMENDMENT

In Pearson, supra, this Court clarified that in evaluating the two-prong test: (1) whether the facts alleged or shown by the plaintiff make out violation of a constitutional right and (2) if so, whether that right was clearly established at the time of defendant's alleged misconduct that it was not necessary that those prongs be evaluated in that exact sequence. Pearson, supra at pp. 815-816. In the instant case, regardless of the sequence in which the two-prong test is evaluated it is clear that Dr. Blum is entitled to summary judgment under a qualified immunity analysis.

The Ninth Circuit explained its reversal of the grant of summary judgment to Dr. Blum as to the conspiracy claim "insofar as these tactics and lines of questioning by the detectives shock the conscience, as demonstrated above, summary judgment in favor of Dr. Blum is unwarranted." [App. 67] However, in utilizing the two-pronged approach clarified by this Court in Pearson, supra, the evidence does not establish: 1) that the "tactics and lines of questioning" by the detectives during Plaintiffs' interrogations rose to the stringent shock the conscience level of conduct necessary to establish a

Fourteenth Amendment violation; [6] and 2) nor was the right to be free from the particular "tactics and lines of questioning" employed by the Escondido detectives clearly established.

A. Plaintiffs' Fourteenth Amendment Rights Were Not Violated

As this Court recognized in Chavez v. Martinez, supra, deprivations of liberty caused by "the most egregious official conduct" or behavior that "shocks the conscience" may violate the Fourteenth Amendment due process clause giving rise to a § 1983 claim. Chavez, supra at p. 774 (Opinion by Justice Thomas); County of Sacramento v. Lewis 523 U.S. 833 (1998).

With respect to interrogations which may violate the Fourteenth Amendment, Justice Kennedy characterized such conduct as the "use of torture or its equivalent in an attempt to induce a statement that violates an individual's fundamental right to liberty of the person. [citation omitted] The Constitution does not countenance the official imposition of severe pain or pressure for purposes of interrogation." Chavez, supra at p. 796, concurring

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[6] As previously set forth, Dr. Blum consulted with the Escondido Police Officers on the single January 23, 1998 interrogation of Michael Crowe and did not consult or participate in any manner in the interrogations of Aaron Houser or Joshua Treadway or any of the other interrogations of Michael Crowe conducted by the Escondido Police. Insofar as Houser is making claims based on either his or Michael Crowe's interrogation, the arguments in this Petition apply fully to Houser's claims.

and dissenting Opinion by Justice Kennedy). Also see footnote 1 in Justice Stevens' concurring and dissenting Opinion in Chavez, supra at p. 787, listing Supreme Court cases where "unusually coercive police interrogation procedures" violated the Fourteenth Amendment. (Darwin v. Connecticut, 391 U.S. 346 (1968) (suspect interrogated for 48 hours *incommunicado* while officers denied access to counsel); Beecher v. Alabama 389 U.S., 36 (1967) (officer fired rifle into suspect's ear and said if you don't tell the truth I'm going to kill you); Clewis v. Texas 386 U.S. 707 (1967) (suspect was arrested without probable cause, interrogated for nine days with little food or sleep, and gave three unwarranted "confessions" each of which he immediately retracted); Reck v. Pate 367 U.S. 433, 439 - 440 (1961) (mentally-retarded youth interrogated *incommunicado* for a week, during which time he was frequently ill, fainted several times, vomited blood on the floor of the police station, and was twice taken to the hospital on a stretcher).

It is undisputed that Dr. Blum did not engage in any conscience-shocking or egregious activity and did not interrogate any of the Plaintiffs in this matter. [App. 297] Moreover, with respect to Plaintiffs' conspiracy claim, the record in the instant case is devoid of the conscience-shocking, egregious conduct equivalent to torture which satisfies the demanding Fourteenth Amendment standards. The District Court, after exhaustively examining the videotapes of the interrogations, determined that the interrogations conducted by the Escondido Police did not rise to the conscience-shocking standard required for a Fourteenth Amendment violation. [App. 291-

298]

The record is devoid of any evidence that the police used any form of physical force or coercion, that the officers yelled at or even raised their voices during any of the interrogations, or deprived the boys of sustenance as this Court has required in previous cases to sustain a Fourteenth Amendment violation based upon the interrogation of a criminal suspect. (See District Court Opinion, App. 291-298.) Because the police officers' interrogation of Michael Crowe does not rise to the level of conscience-shocking and egregious conduct necessary to support a Fourteenth Amendment claim, qualified immunity would be applicable to the claims against Dr. Blum.

B. The Law Was Not Clearly Established That the "Tactics and Lines of Questioning" in the Interrogation Violated the Fourteenth Amendment

The second prong under Pearson, supra whether the right at issue is clearly established - is also satisfied for the purposes of applying qualified immunity to the interrogations. This inquiry turns on the "objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken." Pearson, supra at p. 822. In the instant case it is impossible to argue that the law was clearly established that the "tactics and lines of questioning by the detectives" during Plaintiffs' interrogations violated the Fourteenth Amendment as the Ninth Circuit exclusively relied upon in determining that summary judgment in favor of Dr. Blum was unwarranted. [App. 67]

First, if the law were clearly established that the detectives' tactics and lines of questioning violated the Fourteenth Amendment, the District Court would have been required to find a Fourteenth Amendment violation. Instead, in contrast to the Ninth Circuit, the District Court reviewed all 40-plus hours of the interrogations as well as the transcripts of the interrogations and determined that the detectives' conduct, tactics and lines of questioning did not in fact violate the Fourteenth Amendment. [App. 291-297]

It is difficult to articulate that the law was clearly established that the detectives' tactics and lines of questioning violated the Fourteenth Amendment when a Federal Court District Judge who reviewed hours and hours of the interrogations held that such conduct did not violate the Fourteenth Amendment. As this Court has recognized, "If judges disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy." Pearson, supra at p. 823.

Moreover, the law regarding what constitutes a Fourteenth Amendment violation in a custodial interrogation was far from settled under Ninth Circuit law. The Ninth Circuit's decision in Stoot v. City of Everett 582 F.3d 910 (9th Cir. 2009) exemplifies the unsettled nature of conduct that violates the Fourteenth Amendment in custodial interrogations of minors. In Stoot, a developmentally delayed 14-year-old was interrogated by a police detective regarding claims that he had sexually abused a 3-year-old girl. The interrogation of the 14-year-old involved much of the same tactics/lines of

questioning that the Ninth Circuit in the present case concluded shocked the conscience.

The detective in Stoot threatened the 14-year-old with heightened punishment if the minor denied his guilt and promised leniency if he admitted guilt. Stoot, supra at p. 915. The minor testified that the detective would not take no for an answer and that the minor did not know what to do besides tell the detective that he committed the crime as he believed that was the only way he was going to walk out of the room. Stoot, supra at p. 915. The detective threatened the minor with jail if he kept denying the crime but that if he confessed to the crime it would be all over and there would be no jail. Stoot, supra at p. 915. The mentally-disabled minor in Stoot was overcome by the tactics of the physically-imposing detective and stated he had never been so scared in his life, that he wanted his mom or dad or a teacher, and because the detective kept drilling him that he felt he had to lie and tell the detective what he wanted in order for the interrogation to stop. Stoot, supra at p. 916. The juvenile court found that the statements made by the minor in his interrogation were the product of impermissible coercion and ruled them inadmissible. Stoot, supra at p. 917.

The minor thereafter brought federal constitutional claims under § 1983 against the detective, alleging among other things violation of his substantive due process rights under the Fourteenth Amendment. The detective asserted qualified immunity. As to the Fourteenth Amendment claims, the Ninth Circuit held as follows:

"Jensen's interrogation techniques, even when construed to the light most favorable to the Stoots, did not rise to the level of a Fourteenth Amendment violation. The Stoots allege that Jensen used 'improper promises and threats ... [that] clearly overcame whatever will the child could have in denying these allegations.' They claim that because Paul was a 'developmentally-delayed young boy, he could not fully and accurately comprehend that these promises were reasonable or make an accurate assessment of the potential outcomes in the same manner as an adult.' And they correctly note that under this Court's precedent, psychological coercion is sufficient to state a claim under the Fourteenth Amendment. [citation omitted]

While these allegations might be relevant to the question whether Paul's confession was in fact voluntary and therefore admissible, an issue the juvenile court resolved in Paul's favor, they fall below what is required to state a claim under the Fourteenth Amendment. Notably lacking, for example, is any allegation that Jensen 'intended to injure [Paul] in some way unjustifiable by any government interest,' as required by precedent. [citation omitted] Stoot, supra at pp.

928-929.

It is difficult to argue that the law was clearly established that the Escondido detectives' questioning of Plaintiffs violated their Fourteenth Amendment rights when they utilized similar tactics to those set forth in Stoot which the Ninth Circuit held did not establish a Fourteenth Amendment violation. The Stoot decision is conclusive that the alleged conduct of the Escondido Police Department whom Dr. Blum allegedly conspired with did not violate clearly-established law with respect to the interrogations of Plaintiffs.

Finally, this Court's own decision in Chavez, indicates that the law was not clearly established that the tactics and lines of questioning utilized by the police detectives in Michael Crowe's interrogation violated the Fourteenth Amendment. In Chavez, the criminal suspect "had been shot in the face, both eyes were injured; he was screaming in pain, and coming in and out of consciousness while being repeatedly questioned about the details of the encounter with police." [citation omitted] His blinding facial wounds made it impossible for him visually to distinguish the interrogating officer from the attending medical personnel. The officer made no effort to dispel the perception that medical treatment was being withheld until Martinez answered the questions put to him. There was no attempt through Miranda warnings or other assurances to advise the suspect that his cooperation should be voluntary. Martinez begged the officer to desist and provide treatment for his wounds, but the questioning persisted despite these pleas and despite Martinez's unequivocal

refusal to answer questions. Chavez, supra at p. 798 (concurring and dissenting Opinion of Justice Kennedy).

Under these facts, three Justices determined that the interrogation shocked the conscience and plaintiff's Fourteenth Amendment rights were violated. Chavez, supra at p. 789, 798-799 (Opinion by Justice Kennedy joined by Justice Stevens and Justice Ginsberg). Two Justices, on these very same facts, determined that the conduct of the officers during their interrogation was not "egregious" or "conscience-shocking" to constitute a violation of the Fourteenth Amendment. Chavez, supra at pp. 774-776 (Opinion by Justice Thomas); Chavez, supra at p. 783 (Opinion by Justice Scalia).

As the district court in this case determined, the interrogation in Chavez was far more egregious than the Escondido detectives' interrogations in the present case [App. 294-296] and therefore, a reasonable officer would not have known that the interrogations of the boys would have amounted to a violation of their Fourteenth Amendment rights to substantive due process given the interrogations lacked the brutality has previously marked the police conduct found by the Courts to be "shocking to the conscience." [App. 294-296]

The law was not clearly established that the tactics and lines of questioning utilized in Plaintiffs' interrogations shocked the conscience or were so egregious as to constitute a violation of the Fourteenth Amendment. If allowed to assert qualified immunity, Dr. Blum would therefore be entitled to summary judgment in his favor based upon the remaining conspiracy claim against him.

IX.
CONCLUSION

Because there are serious constitutional questions raised by Dr. Blum's case regarding the application of qualified immunity to private citizens, the Court should grant Dr. Blum's Petition for Writ of Certiorari.

Dated: September 16, 2010

Respectfully submitted,

MURCHISON & CUMMING, LLP

By: _____

Dan L. Longo, Esq.
Attorneys for Petitioner
Lawrence N. Blum, Ph.D.

CERTIFICATE OF COMPLIANCE

No. _____

LAWRENCE N. BLUM, PH.D., *Petitioner*

v.

MICHAEL CROWE, STEPHEN CROWE, CHERYL A. CROWE, JUDITH ANN KENNEDY, SHANNON CROWE, AARON HOUSER, MARGARET SUSAN HOUSER, CHRISTINE HUFF, AND GREGG HOUSER, *Respondents*

As required by Supreme Court Rule 33.1(h), I certify that the Petition for a Writ of Certiorari contains 8,838 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 16th day of September, 2010.

Dan L. Longo, Esq.

CERTIFICATE OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 750 "B" Street, Suite 2550, San Diego, California 92101-8114.

On September 16, 2010, I served true copies of the following document(s) described as **PETITION FOR WRIT OF CERTIORARI** on the interested parties in this action as follows:

Supreme Court of the United States
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Washington, DC 20543
(original and 40 copies)

(and 3 copies to each of the following):

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BY MAIL: I enclosed the document(s) in sealed envelopes or packages addressed to the persons/entities at the above addresses and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with Murchison & Cumming's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on September 16, 2010, at San Diego, California.

_____
Diane E. Christel